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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,519	09/17/2003	Rabih O. Darouiche	124169-1010 (OTA 02-036	4877
37058	7590	09/13/2006	EXAMINER JAWORSKI, FRANCIS J	
TIM HEADLEY GARDERE WYNNE SEWELL LLP 1000 LOUISIANA, SUITE 3400 HOUSTON, TX 77002			ART UNIT 3768	PAPER NUMBER

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/664,519	<b>Applicant(s)</b> DAROUCHE ET AL.	
	<b>Examiner</b> Jaworski Francis J.	<b>Art Unit</b> 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 9/17/03 IDS.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/17/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weber (US4886059) and Teves (US4967759), further in view of Turner (US5638812).

Claim 10 merely calls for an endotracheal tube having ports for releasing anti-biofilm/antimicrobial materials internally and to the exterior and also spots - meaning sites or locations - for ultrasound transducers or applicator electrodes. Since it was known per Weber to place Doppler transducers 21 on an endotracheal tube tip having internal/external ports e.g. 33, 34 and it was similarly known per Teves to provide both pacing type stimulatory electrode pair 104 and acoustic pressure sensor(s) 42 in

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conjunction with a multiple lumen device per col. 6 lines 33 - 38, and since the application of anti-microbial/biofilm coating treatment to endotracheal tubes was known per Turner, the structure of an endotracheal tube without electronics, namely such a device having multiple ports and lumens of a type capable of having mounted thereto the ultrasound and electrode endotracheal tube-treatment effectors would have been well-known.

Claims 11 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 10 above, and further in view of Fischer, Jr. (US5544648) since the latter evidences that the implementation of multiple lumens as called for in the former might be effected by a concentric design.


***Allowable Subject Matter***

Claims 1 – 9 are allowed.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj

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Francis J. Jaworski  
Primary Examiner